



LEGAL AID ACT, 2011 CAP L9 L.F.N. 2004

EXPLANATORY MEMORANDUM

This Act repeals the Legal Aid Act Cap. L9, Laws of the Federation of Nigeria, 2004, enact the Legal Aid Act, 2011 in line with international standards, provide for the establishment of legal aid and access to justice fund into which financial assistance would be made available to the Council on behalf of the indigent citizens to prosecute their claims in accordance with the Constitution and further to empower the existing Legal Aid Council to be responsible for the operation of a scheme for the grant of legal aid and access to justice in certain matters or proceedings to persons with inadequate resources in accordance with the provision of this Act.

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LEGAL AID ACT, 2011

An Act to repeal the Legal aid Act Cap. L9 Laws of the Federation of Nigeria, 2004 in line with interpretational standards and to provide for the establishment of legal aid and access to justice fund into which financial assistance would be made available to the Council on behalf of the indigent citizens to prosecute their claims in accordance with the Constitution and further to empower the existing Legal Aid council to be responsible for the operation of a scheme for the grant of legal aid and access to justice in certain matters or proceedings to persons with inadequate resources in accordance with the provision of this act; and for related matters.

[] Commencement

ENACTED by the National Assembly of the Federal Republic of Nigeria –

PART 1 – ESTABLISHMENT OF THE LEGAL AID COUNCIL

Establishment of Legal Aid Council.

1. (1) There is established the Legal Aid Council (in this Act referred to as “the Council”).
- (2) The Council shall be a body corporate with perpetual succession and a common seal and may sue and be sued in its corporate name.
- (3) The Council shall have responsibility for the provision in accordance with this Act, of legal aid, advice, access to justice in respect of persons entitled thereto.
- (4) The Council shall comprise –
 - (a) the Governing Board made up of the Chairman and the members; (b) the Director-General of the Council; and
 - (c) such supporting legal and other staff engaged for the purposes of the efficient performance of the duties and obligations of the Council under or pursuant to this Act.

Qualification and Membership of the Governing Board, etc.

2. (1) The Governing Board shall comprise of a Chairman, who shall be a retired judge or a legal practitioner of repute of not less than 15 years standing-

- (a) representative of the Attorney-General;
- (b) representative of the Federal Ministry of Finance;
- (c) representative of the National Youth Service Corps Directorate;
- (d) representative of the Inspector-General of Police;
- (e) representative of the Comptroller General of Prisons;
- (f) the Nigeria Bar Association, four representative, one of whom shall be the General Secretary of the Association;
- (g) representative of the Nigerian Labour Congress;
- (h) representative of Women Group providing free legal aid services;
- (i) two representatives of States sponsoring legal aid services; (j) representative of civil society based organization providing legal aid;
- (k) representative of the Nigerian Union of Journalists; and
- (l) the Director-General.

(2) The Chairman and other members of the Governing Board shall be appointed by the President.

(3) The Director-General shall be responsible for the provision of the secretariat and logistics for all meetings and other businesses of the Council.

(4) The First Schedule to this Act shall have effect with respect to the qualifications and tenure of the office of members of the council and other matters contained therein.

Functions of the Governing Board.

3. The functions of the Governing Board shall include the establishment of broad policies and strategic plans of the Council in accordance with the provisions of this Act.

Appointment of Director-General of the Council.

4. (1) There shall, on the recommendation of the Attorney-General of the Federation, be appointed by the President a Director-General of Legal Aid Council, who shall be the Chief Executive Officer of the Council, who shall be responsible for the day-to-day management of the human, financial and material resources in accordance with this Act.

(2) A person shall not be qualified to hold or to perform the functions of the office of Director-General unless he is a legal practitioner of not less than 10 years standing.

(3) There shall be paid to the Director-General such salary and allowances as may be determined by the Council with the approval of the Revenue Mobilization, Allocation and Fiscal Commission: Provided that such salary and allowances are not less than those payable to the Director-General of any Ministry of the Government of the Federation.

(4) There may be appointed from time to time by the Council, such supporting legal and other staff as may be required for the purposes of the efficient performance of the duties of the Council under or pursuant to this Act.

(5) Subject to subsection (3) of this section, the remuneration of the staff of the Council shall be determined by the Council after consultation with the Salaries and Wages Commission.

Service to the Commission to be pensionable.

5. (1) The provisions of the Pension Reform Act shall apply to the Director-General and other members of staff of the Council in the same manner as it applies to persons holding equivalent grades in the public service of the Federation.

(2) Nothing in this section shall be construed as preventing the appointment of a person to any office in the Council on terms, which preclude the grant of a pension and gratuity in respect of that office.

State offices of the Council.

6. (1) The following shall form the major Departments as the Councils head office-

(a) Finance and Administrative;

(b) Litigation;

(c) International Relations, Corporate Operations and Planning and Research, and such other Departments or units as the Board may decide.

(2) There shall be a zonal office of the Council in each of the six geo-political zones to be headed by a zonal officer who shall be a lawyer of appropriate rank who shall be responsible for the coordination of State offices and their activities.

(3) The Zonal officer shall report to and be responsible to the Director of Litigation.

(4) The Council shall establish one office in each State of the Federation to be headed by an officer of appropriate rank who shall be responsible for provision of service in the State and reports to the zonal officer in whose jurisdiction the State belongs.

(5) Each state office of the Council shall operate 3 legal service units, namely

(a) Criminal Defence Unit;

(b) Civil Litigation Unit;

(c) Community Legal Service Unit.

Power of the President to give directives to the Council.

7. The President may give the Board directives of a general character or relating generally to particular matters with regard to the exercise by the Council of its functions under or pursuant to this Act.

PART II –LEGAL AID ADVICE

Scope of legal aid and access to justice

8. (1) The grant of legal aid, advice and access to justice shall be provided by the Council in 3 broad areas, namely, Criminal Defence Service, Advice and Assistance in Civil matters including legal representation in court and Community Legal Services subject to merits and indigence tests for the parties.

(2) The Council, shall establish, maintain and develop a service known as the Criminal Defence Service for the purpose of assisting indigent persons involved in criminal investigation or proceedings specified in the Second Schedule to this Act, access to such advice, assistance and representation as the interest of justice requires.

(3) The Council shall establish and maintain a service to be known as the Civil Litigation Service for the purpose of assisting indigent persons to access such advice, assistance, and representation in court where the interest of justice demands, to secure, defend, enforce, protect or otherwise exercise any right, obligation, duty, privilege interest or service to which that person is ordinarily entitled under the Nigerian legal system.

(4) Legal Aid shall also be granted in respect of any breach or denial of any such right, obligation, duty, privilege or service and the Council shall be responsible for the representation before any court or tribunal for such civil matters.

(5) Legal Aid shall consist, on terms provided by this Act, of-

(a) the assistance of a legal practitioner including all such assistance as is usually given to by a private legal practitioner in the steps preliminary or incidental to any proceeding;

(b) representation by a legal practitioner including all such assistance as is usually given to by a private legal practitioner before any court; and

(c) such additional aid (including advice) as may be prescribed.

(6) Where regulations made provide for Legal aid, provision shall be made therein to the effect that persons shall not be given legal aid in connection with any such proceeding unless he shows to the satisfaction of the Director-General or other person authorized by the Council that he has reasonable grounds for taking, defending or being a party Scope of legal Aid and access to Justice. Second Schedule thereto, and may also be refused legal aid if it appears unreasonable that he should receive it in the particular circumstances of the case.

(7) The Council shall establish, maintain and develop a service known as Community Legal Service for the purpose of promoting individual services and in particular, for ensuring that individuals have access to services that effectively meet their needs. Community Legal Services for the purpose of this section means –

(a) the provision of general information about the law and legal system and the availability of legal services;

(b) the provision of assistance; in preventing or settling or otherwise resolving disputes about legal rights and duties;

(c) the provision of assistance in enforcing decisions by which such dispute are resolved;

(d) the provision of assistance in financial support and rendering; and

(e) the provision of assistance with regards to claims against public authorities, private organizations and individuals: Provided that the Director-General shall reserve the right to set the limit of such assistance.

(8) Every person authorized by the Council to exercise the functions relating to Community legal Service shall do so in such a manner as to –

(a) promote improvement in the quality of services provided for the benefit of those who need them;

(b) ensure that the services provided in relation to any matter are appropriate having regard to its nature and importance; and

(c) achieve a swift and fair resolution of disputes in order to avoid the necessity of a protracted court proceeding.

PART III – FINANCIAL ASPECTS OF LEGAL AID

General Fund and Legal aid and Access to justice Fund

9. There is established the Legal Aid General Fund for the day-to-day administration of the Council into which shall be paid-

(a) such sums as shall be appropriated annually by the National Assembly pursuant to section 46 of the Constitution of the Federal Republic of Nigeria; and

(b) such sums as shall be appropriated annually or otherwise provided from time to time by the Government of each State of the Federation and the Federal Capital Territory.

Persons entitled to Legal aid

10. (1) Legal aid shall only be granted to a person whose income does not exceed the national minimum wage.

(2) Notwithstanding the provision of subsection (1), the Board may, in exceptional circumstance, grant legal aid service to a person whose earning exceeds the national minimum wage.

(3) Notwithstanding the provisions of subsection (1) of this section, the Governing Board may approve the giving of legal aid on a contributory basis to a person whose income exceeds ten times of the national minimum wage.

Provided that –

(a) the Council shall recover the expenses incurred in giving legal aid to such a person by the retention of both an amount equal to 10 percent of the damages awarded and the costs awarded to him;

(b) where such a person has been granted Legal Aid on a contributory basis he shall be entitled to a refund of his contribution from such costs.

(4) No contribution made under subsection (2) of this section shall exceed the appropriate slim calculated in the manner prescribed for that purpose.

(5) The Council shall not be liable in any way to pay costs howsoever awarded against a person granted legal aid.

(6) The rules of any court relating to payment of fees shall not apply to a person granted legal aid.

Ascertainment of means

11. (1) In ascertaining the means of any person for the purposes of this Act, that person's income and his personal and real property shall be taken into account. (2) In assessing a person's means such of his commitments as may be prescribed, shall be deducted from the resources, which would otherwise be his means.

Power to accept gifts.

12. (1) The Council may accept gifts of land, money or other property upon such terms and conditions, if any as may be specified by the person or organization making the gift. (2) The Council shall not accept any gift if the conditions attached by the person or organization making the gift to the acceptance thereof are inconsistent with the functions of the Council.

Audit

The accounts of the Council shall be audited in accordance with the relevant laws after the end of each financial year by auditors appointed by the Board and the fees of the auditors and the expenses for the audit generally shall be paid from the Legal Aid General Fund.

PART IV – LEGAL PRACTITIONERS

Legal Practitioners

14. (1) Panels of Legal Practitioners willing to act for persons receiving legal aid (whether gratuitously or otherwise) shall prepare and be maintained by staff of the Council and there may be separate Panels for different purposes and, for different courts and different districts.

(2) A legal practitioner shall be entitled to have his name on the appropriate panel or panels unless the designated staff of the Council thinks that there is reason (arising out of his conduct when acting or selected to act for persons receiving legal aid or his professional conduct generally or, in the case of a member of the firm) for excluding him.

(3) Where a legal practitioner is aggrieved by any decision excluding him (whether permanently or temporarily) from any panel he may refer the matter to the Director-General and if he is not satisfied with the decision of the Director-General he may appeal to the Governing Board.

Demand for or receipt of certain payments prohibited

15. (1) Subject to the provisions of this Act a legal practitioner or other legal service providers who has acted for a person receiving legal aid shall be paid for so acting by the receipt of certain legal aid Fund and the legal practitioner or legal service provider shall not be entitled to payments charge or recover from a legally assisted person any amount-

(a) by way of costs in respect of work assigned by the Council to a private legal practitioner on behalf of that person; or

(b) by way of disbursement incurred on behalf of that person in connection with that work except with the approval of the Governing Council.

(2) A provision of any agreement (whether in writing or not or whether entered into before or after the commencement of this Act) –

(a) under which the operation of this section is excluded, modified or restricted; or

(b) which has the effect of excluding, modifying or restricting the operation of this section is void to the extent of this exclusion.

(3) The sums payable under subsection (1) of this section to a legal practitioner shall be such as may be determined by the Council.

(4) In this Part, references to acting for a person receiving legal aid, shall in relation to a legal practitioner, include acting indirectly for such a person, as agent for his legal practitioner so however that any selection from any panel of a legal practitioner to act as agent shall be made by the legal practitioner for whom he is to act: Provided always that the Council shall review the panels of legal practitioners annually and only legal practitioners who have paid their annual subscription or practicing fee to the Nigeria Bar Association can be appointed by the Council to act for persons receiving legal aid.

Lawyer serving Youth Corps to Give free legal aid

16. Notwithstanding the provisions of any other enactment including rules of court, legal practitioners for the time being serving in the National Youth Service Corps shall, if the Council so directs, act for a person receiving legal aid, in which case no professional fees shall be made by the Council except stipend and travelling allowance.

Non-governmental organization law clinic and paralegal.

17. (1) The Council shall maintain a register of non-governmental organizations and law clinics that are engaged in the provision of legal aid or assistance to persons who are entitled to legal aid under this Act.

(2) The Council may partner with or otherwise engage the services of such organizations in a manner consistent with the mandate of the Council.

(3) The Council may grant licenses to persons who have undergone a prescribed course in paralegal services to render such services in appropriate situations.

Pro bono cases and enjoyment of privileges.

18 (1) A legal practitioner who institutes or conducts pro bono cases on behalf of persons entitled to legal aid under this Act shall register such cases with the Council, which shall keep record of and monitor the progress of such matters.

(2) A legal practitioner who applies to be appointed to the rank of Senior Advocate of Nigeria shall be required to show evidence of diligent conduct of not less than three pro bono cases in the legal year immediately preceding his application.

(3) It shall be a professional misconduct for any legal practitioner to abandon or otherwise neglect such cases.

Prison monitoring and review cases of awaiting trial inmates.

19. (1) The Council shall, from time to time, conduct inspection of prisons, police cells and other places where suspected persons are held in order to assess the circumstances under which such persons are detained.

(2) It shall be the duty of all police officers and courts to inform suspected person of his entitlement to the services of a legal practitioner from the moment of arrest and if such suspect cannot afford the services of a legal practitioner to notify the Council to represent him if he so desires.

(3) The Council and the lawyers designated by it shall be entitled to have access to and interview suspects detained in prisons, police stations, or any other places of detention in Nigeria and such designated lawyers shall be entitled to be present during the interrogation of the suspects in accordance with the rights guaranteed to suspects under the Constitution.

(4) The Council shall regularly liaise with the Judiciary, Attorney General of the Federation or of any State, the Department of Public Prosecution, the Inspector-General of Police, the Commissioners of Police, Prison Authority or other agencies as may be appropriate, in order to avoid unnecessary delay in the prosecution of cases.

(5) The Council may file an application in any appropriate court for the review of the case of any person who has been held in any place of custody without trial for a period exceeding the maximum provided by the Constitution.

PART V – MISCELLANEOUS AND SUPPLEMENTARY

How information disclosed are to be treated

20. (1) All information collected publicly or received by the Council in the discharge of its functions and exercise of its powers under this Act shall be publicly accessible unless the disclosure of such information would be

- (a) harmful to the safety and security of any person;
- (b) cause avoidable damage to the best interests of a known child or young person;
- (c) irreparably damaging to the best interest of the known child or young person.

(2) Subsection (1) of this section shall not prevent the disclosure of information for any purpose with the consent of the person in connection with whose case it was furnished where he did not furnish it himself, with that of the person or body of persons who furnished it.

(3) Any person who otherwise than in compliance with the provisions of this Act or of regulations made thereunder discloses information obtained by him commits an offence and shall be liable on summary conviction to a fine of N50,000.00 or imprisonment for a term not exceeding six months or to both such fine and imprisonment.

Penalty for False Information

21. If a person seeking or receiving legal aid or advice in furnishing any information required under or pursuant to this Act, knowingly or recklessly makes any statement which is false in a material particular he commits an offence and shall be liable on summary conviction to a fine of N50, 000.00 or imprisonment for a term not exceeding six months or to both such fine and imprisonment.

Annual reports

22. The Council shall in each year make a report to the Attorney-General of its proceed under this Act during the preceding year containing – (a) an account of its operation and transactions, throughout the preceding year; and (b) a statement of its account audited in accordance with section 13 of this Act.

Regulations

23. (1) The Governing Board may make regulations generally for the better carrying on the purpose of this Act and without prejudice to the generality of the foregoing, such regulations may make provision for –

- (a) anything which is to be or which may be prescribed under this Act;
- (b) the manner in which the means of any person who may be eligible for Legal Aid shall be computed;

(c) the manner in which contributions into the Legal Aid Fund and the Access to Justice fund are to be made by persons receiving legal aid or advice and in which sums owing from such persons to the Council may be recovered;

(d) reports and information required by the Council for the purposes of this Act be supplied by public offices and other persons; and

(e) matters which appear to be Governing Council necessary or desirable for giving effect to the provisions of this Act or for preventing abuses thereof.

(2) The Governing Board shall also make regulations for the involvement of nongovernmental legal aid providers in accordance with this Act.

(3) The Council may prescribe the form of any certificate, any application and any other document which may be required for the purposes of this act.

(4) The Council shall make regulations for the involvement of Para-Legal aid provision in accordance with the provisions of this Act.

(5) Standard to be observed in assigning a legal practitioner to Community Legal services or other services including fees payable and any other which appear to the Council necessary or desirable for giving effect to the provision of this Act or for preventing abuses.

Interpretation

24. (1) In this Act –

“Attorney- General” means the Attorney-General of the Federation;

“Council” means the Legal Aid Council established under section 1 of this Act;

“Community” means the Legal Services” are services which may include non-court advisory services, public awareness service, mediation, and other counseling services required generally;

“Offence” means offences that are specified in the Second Schedule or as created under this Act.

“Paralegal” describes any person although not admitted to the practice of law in Nigeria, performs substantially legal tasks under the direction and supervision of a legal practitioner.

“Proceedings” Means –

(a) any proceeding before any court dealing with individual; and

(b) any other such proceedings concerning an individual before such court or body as may be authorized by the Director – General;

“Tribunal” includes an ad-hoc tribunal.

(2) In this Act, references to persons seeking or receiving legal aid do not include references to corporate bodies.

Citation

25. This Act may be cited as Legal Aid, 2011.

SCHEDULES FIRST SCHEDULE - Section 2 (4)

SUPPLEMENTARY PROVISIONS RELATING TO THE COUNCIL

Tenure of Office

1. (1) The Chairman shall hold office for 3 years and may be eligible for re-appointment for one further period of 3 years.

(2) Members of the Governing Board (not being ex-officio members) shall hold office for 3 years and shall be eligible for re-appointment for one further period of 3 years.

2. (1) The Chairman or any of the members of the Governing Board referred to in paragraph (2) of this Schedule may, by notice addressed to the President through the Attorney General of the Federation, resign his appointment.

(2) The tenure of the office of the Director –General of the Council shall be 4 years and may be renewable for one final term of 4 years on the basis of satisfactory performance.

Proceedings of the Governing Council

3. (1) Subject to this Act and section 27 of the Interpretation Act, the Governing Board may make standing orders regulating the proceedings of the Governing Board or of any committee thereof.

(2) The quorum of the Governing Board shall be the Chairman and 5 other members, and the quorum of any committee of the Governing Council shall be determined by the Governing Board.

4. (1) Subject to the provision of any standing order of the Governing Board, the Governing Board shall meet once every 3 months, and if the Chairman is required to do so by notice [given] to him by not less than 5 other members, he shall summon a meeting of the Governing Board to be held within 20 days from the date on which the notice is given.

(2) At any meeting of the Governing Council, the Chairman shall preside, but if he is absent, the members present at the meeting shall appoint one of their members to preside at that meeting.

(3) Where the Governing Board desires to obtain the advice of any person on a particular matter, the Governing Board may co-opt him as a member for such period as it thinks fit; but a person who is a member by virtue of this subparagraph shall not be entitled to vote at any meeting of the Governing Council and shall not count towards a quorum.

(4) Notwithstanding anything in the provision of subparagraphs (1), (2) and (3) of this paragraph the first meeting of the Governing Board shall be summoned by the Chairman.

Committees

5. (1) The Governing Board may appoint one or more committees to carry out, on behalf of the Governing Board, such functions of the Governing as Governing Board may determine.

(2) A committee appointed under this paragraph shall consist of the number of persons determined by the Governing Board, and not more than one-third of those persons may be persons who are not members of the Governing Board and a person other than a member of the Governing Board shall hold office in accordance with the terms of the instrument by which he was appointed.

(3) A decision of the committee of the Governing Council shall have no effect until it is confirmed by the Governing Council.

Miscellaneous

6. (1) The fixing of the seal of the Governing Board shall be authenticated by the signature of the Director General or of some other member authorized generally or specifically to act for that purpose by the Director General.

(2) A contract or instrument which is made or executed by any person not being a body corporate, would not be required to be made under seal, may be made or executed on behalf of the Governing Board by any person generally or specifically authorized for that purpose by the Governing Council.

(3) A document purported to be a document executed under the seal of the Governing Board shall be received in evidence and shall, unless the contrary is proved, be deemed as if it were so executed.

7. Members of the Governing Board shall be paid out of monies at the disposal of the Council such as travelling and subsistence allowance in respect of any period spent on the business of the Governing Board as the President may determine.

8. The validity of the proceedings of the Governing Board or of a committee thereof shall not be affected by any vacancy in the membership of the Governing Board or committee, or by any defect in the appointment of a member of the Board or of a person to serve on the committee, or by reason that a person not entitled to do so took part in the proceedings provided that a quorum is maintained.

9. A member of the Governing Board, and any person holding office on a committee of the Governing Board, who has a personal interest in any contract or arrangement entered into or proposed to be considered by the Governing Board or to a committee thereof shall immediately disclose his interest to the Governing Board or to a committee and shall not vote on any question relating to the contract or arrangement provided that a quorum is maintained.

SECOND SCHEDULE - Section 8 (2)

Proceedings in respect of which legal aid may be given

Criminal Code Penal Code

A. Proceedings in a court or tribunal (whether at first instance or on appeal) wholly or partly in respect of crimes of the following descriptions, or as near to those descriptions as may be, respectively in any Criminal Code or Penal Code-

1. Murder of any degree culpable/homicide punishable with death
2. Manslaughter culpable homicide not punishable with death
3. Maliciously or willfully grievous hurt Wounding or inflicting grievous Bodily harm.
4. Assault occasioning actual bodily harm Criminal force occasioning actual Bodily harm.
5. Common assault.
6. Affray.
7. Stealing.
8. Rape.
9. Armed robbery.

B. Aiding and abetting, or counseling or procuring the commission of, or being an accessory before or after the fact to, or attempting or conspiring to commit any of the offences listed in paragraph A of the Schedule.

C. 1. Civil claims in respect of accidents including employee's compensation claim (under the Employee's Compensation Act, (Act No. 13 of 2010).

2. Civil claims to cover breach of fundamental rights guaranteed under chapter IV of the Constitution of the Federal Republic of Nigeria.

3. Civil claims arising from criminal activities against persons who are qualified for Legal Aid under this Act.